

FILED  
08 MAR 13 PM 3:45

Antonio Jimenez D-58095  
P.O. Box 705/FD-83-L  
CTF North Facility  
Soledad, CA.93960-0705

In Pro Per

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTONIO JIMENEZ,

Petitioner,

vs.

BEN CURRY,

RSEPONDENT.

NO. C 07-3904 JF (PR)

MOTION TO SERVE AN  
ORDER TO SHOW CAUSE  
ON THE RESPONDENT

Petitioner, a state prisoner proceeding pro se filed for writ of habeas corpus pursuant to 28 U.S.C § 2254 challenging a decision by the Board of Parole Hearings denial of a parole date

STATEMENT

On 03/03/08, the court issued an order to show cause to petitioner Antonio Jimenez. The order is to the respondent to file with the court and serve on petitioner within sixty days of the issuance of this order. Page four of this order states that a copy of this ruling was mailed to the petitioner but not to the respondent. (exhibit A).

Petitioner therefore request the court to issue an order on the respondent and notification of that order so that he may proceed with his habeas petition.

**EXHIBIT A**

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8 NOT FOR CITATION  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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12 ANTONIO JIMENEZ,  
13                   Petitioner,

14 vs.

15 BEN CURRY,  
16                   Respondent.  
17

No. C 07-3904 JF (PR)  
ORDER TO SHOW CAUSE

18           Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas  
19 corpus pursuant to 28 U.S.C. § 2254 challenging a decision by the Board of Prison Terms  
20 ("Board") to deny him parole. The Court orders Respondent to show cause why the  
21 petition should not be granted.

22                                   **STATEMENT**

23           In 1987, a jury in Orange County Superior Court convicted Petitioner of second  
24 degree murder (Cal. Penal Code § 187). He was sentenced to a term of 17 years to life in  
25 state prison. Petitioner challenges the Board's denial of parole at his sixth parole  
26 suitability hearing.

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## DISCUSSION

### A. Standard of Review

This Court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

A district court shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

### B. Petitioner's Claims

As grounds for federal habeas relief, Petitioner claims that the Board's decision to deny him parole violated his right to due process because it is not supported by any relevant or material evidence and relies on unchanging factors such as the commitment offense. Liberally construed, Petitioner's claim is sufficient to require a response. The Court orders Respondent to show cause why the instant petition should not be granted.

## CONCLUSION

1. The Clerk shall serve by mail a copy of this order and the petition and all attachments thereto upon the Respondent and the Respondent's attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this order on the Petitioner.

2. Respondent shall file with the Court and serve on Petitioner, within **sixty** days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state parole record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on Respondent within **thirty days** of his receipt of the

1 answer.

2 3. Respondent may file a motion to dismiss on procedural grounds in lieu of  
3 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules  
4 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file  
5 with the Court and serve on Respondent an opposition or statement of non-opposition  
6 within **thirty days** of receipt of the motion, and Respondent shall file with the Court and  
7 serve on Petitioner a reply within **fifteen days** of receipt of any opposition.

8 4. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded  
9 that all communications with the Court must be served on respondent by mailing a true  
10 copy of the document to Respondent's counsel. Petitioner must keep the Court and all  
11 parties informed of any change of address by filing a separate paper captioned "Notice of  
12 Change of Address." He must comply with the Court's orders in a timely fashion.  
13 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
14 to Federal Rule of Civil Procedure 41(b).

15 IT IS SO ORDERED.

16 DATED: 2/29/08

  
JEREMY FOGEL  
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Antonio Jimenez  
3 D-58095  
4 Correctional Training Facility  
5 P.O. Box 686  
6 Soledad, CA 93960  
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DECLARATION OF SERVICE BY MAIL

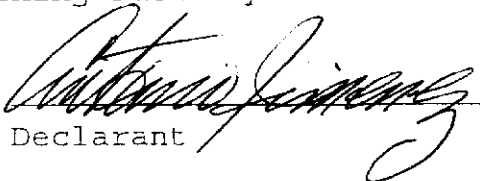
(28 U.S.C. section 1746)

I, Antonio Jimenez, declare: That I am a resident of the Correctional Training Facility in Soledad, California; I am over the age of eighteen (18) years; I am / am not a party to the attached action; My address is P.O. Box 705, \_\_\_\_\_, CTF - North Facility, Soledad, CA 93960-0705; I served the attached document entitled: **MOTION TO SERVE AN ORDER TO SHOW CAUSE ON THE RESPONDENT.**

on the persons/parties specified below by placing a true copy of said document into a sealed envelope with the appropriate postage affixed thereto and surrendering said envelope(s) to the staff of the Correctional Training Facility entrusted with the logging and mailing of inmate legal mail addressed as follows:

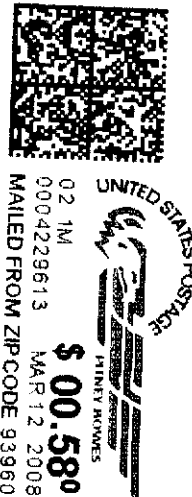
OFFICE OF THE ATTORNEY GENERAL  
455 GOLDEN GATE AVENUE. SUITE 11000  
SAN FRANCISCO, CA. 94102

There is First Class mail delivery service by the United States Post Office between the place of mailing and the addresses indicated above. I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct, and I executed this service this 11<sup>th</sup> day of March 2008, \_\_\_\_\_, at the Correctional Training Facility in Soledad, CA.

  
Declarant

Antonio Jimenez D-58095  
P.O. Box 705/FD-83-1  
Caf North Facility  
Soledad, CA.93960-0705

Legal Mail



Office Of The Clerk  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
450 Golden Gate Avenue.  
SAN FRANCISCO, CALIFORNIA. 94102